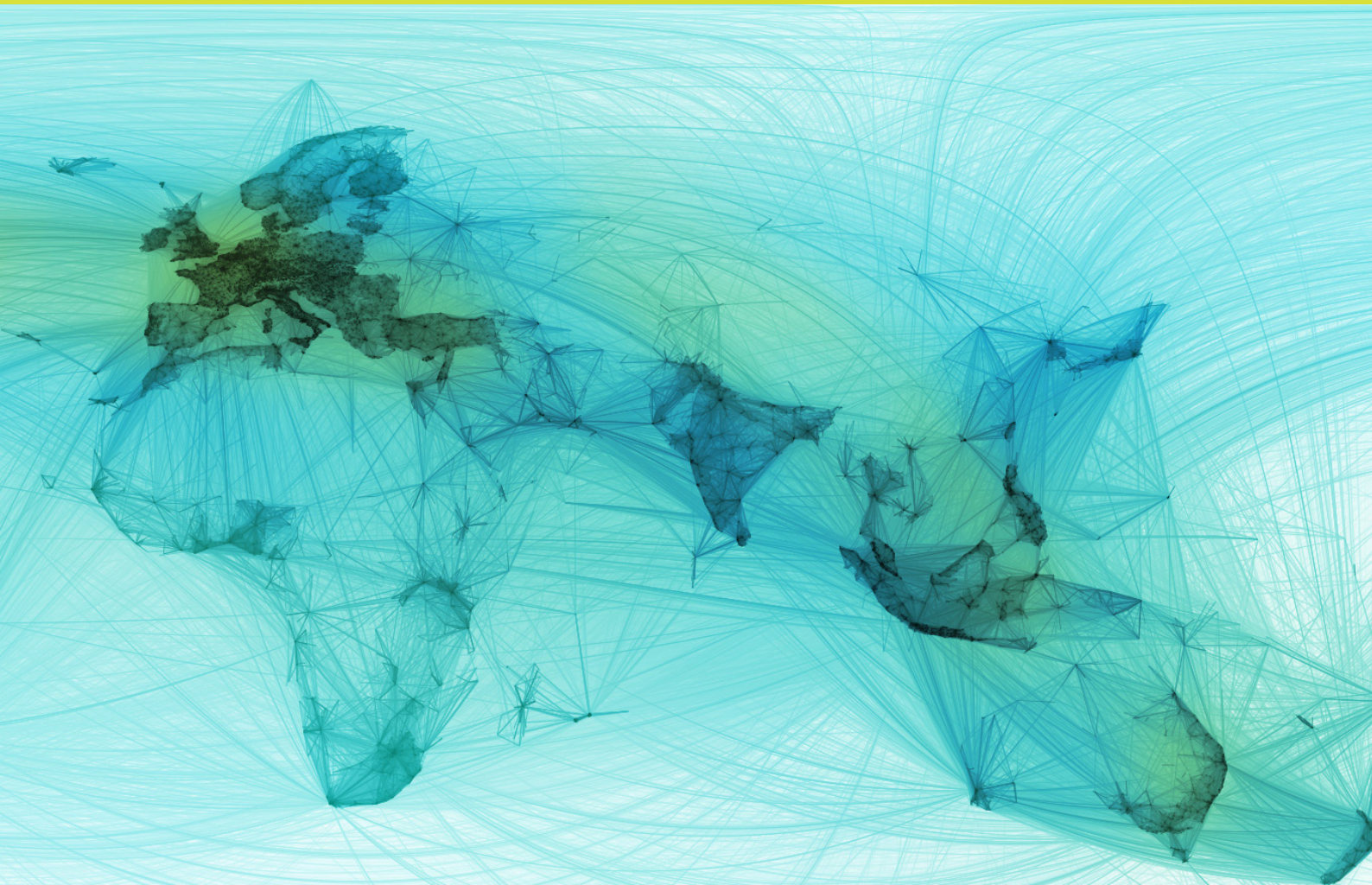


Assertive but Flexible

India's Approach to Non-Proliferation and Export Control Regimes

NFG Policy Paper No. 2/2013 Deba R. Mohanty



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Assertive but Flexible:

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Deba R. Mohanty

Executive Summary

India's international profile as a rising power has drawn considerable attention in recent years, and external powers such as the United States and European countries have begun to change their global non-proliferation and export control regimes, which have been sites of considerable tensions between India and world powers over many decades. It also examines how India's approach has been perceived by external powers and points to opportunities for deepening engagement with India over the coming years.

India will likely continue to pursue an assertive approach in the future, making its formal entry into these regimes difficult. However, India is not averse to strategic bargaining on these issues, and there are opportunities for external powers, including the European Union and its member states, to deepen engagement with India. However, much depends on the approach taken by each side. Constructive engagement will require that each side demonstrates flexibility and recognises the constraints facing the other side. The paper identifies steps that both India and the EU need to take in order to step up collaboration engagement, and identifies pathways for possible cooperation in the area of nuclear safety.

Policy Recommendations

- India must realize that non-proliferation and export control regimes are rule-bound and based on agreed norms and conditions, and should make some of its demands flexible in order to enter a new phase of negotiations.
- The EU should see Indian flexibility as an opening for further negotiations towards a mutually agreeable solution. However, the EU needs to manage divisions between member states, especially given India's preference for dealing bilaterally with member states for defence goods and high technology trade.
- In the short term, the heightened profile of nuclear safety in India following the Fukushima incident presents an opening for European engagement with India. The EU needs to analyse the strategic underpinnings of these developments, which could potentially open up a lot of issues for further negotiations.

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Assertive but Flexible: India's Approach to Non-Proliferation and Export Control Regimes

Deba R. Mohanty

1. Introduction

India's international profile as a rising power has drawn considerable attention in recent years. This has been driven by a range of factors, including robust economic growth over the last decade, meaningful engagement with major powers on international issues, a constructive role in difficult economic situations, a thriving democracy, relative domestic socio-political stability, and relatively enhanced military capabilities.

Stemming from these developments, external powers such as the United States and European countries have begun to change their engagement strategies. The US has departed significantly from its earlier foreign policy positions in order to accommodate India by recognizing it as a rising power. It has argued that India's role in global affairs must not be ignored, but instead should be encouraged further by the international community. Similar sentiments exist in other major capitals of the world as well, including within Europe.

Views of India's rise within Indian policy circles vary. One view sees India as a ranking power that does not yet know how to exercise its power (Kumar, 2011). A second perspective is that India is "not yet there", and should be thought of instead as a "pre-mature power" (Saran 2010). A third view is that India is not a global power (Gharekhan 2012). However, one common feature that connects all of these perspectives is the desire to see India grow in every sphere and become recognized as a responsible power.

In order to shed light on India's conduct and how it is perceived by external powers, this policy paper examines India's postures toward global non-proliferation and export control regimes. These have been sites of considerable tensions between India and world powers over many decades. The paper explores the Indian approach to these regimes, examines how India's approach has been perceived by external powers, and points to opportunities for deepening engagement with India over the coming years. In order to inform a broader international audience, the paper explains these developments from an Indian perspective so that major stakeholders can contemplate ways and means to deal with India on critical issues affecting global security and peace.

The paper argues that India's approach will continue to be aggressive in the future, making India's case for formal entry into these regimes more difficult. However, there are rays of hope. India is not averse to strategic bargaining on these issues, and there are opportunities for external powers, including the European Union and its member states, to deepen engagement with India. However, much depends on the approach taken by each side.

2. India's Approach to Non-Proliferation and Export Control Regimes

India's relationship with multilateral regimes in the fields of nuclear, conventional and dual-use or controlled goods has evolved over time. Over the past six decades, India's approach has been characterised in multiple ways: by 'enthusiasm' until the late 1960s, as 'disappointing and reactive' in the following three decades, and 'ad-hoc yet accommodative' since 1998. Since India's nuclear tests in 1998, and particularly since 2002 when India received favourable responses from its willingness to grow closer to the United States, India's position towards these multilateral regimes appears to be less rigid than before. Although India still opposes some basic principles of global non-proliferation regimes, its nuanced position shows some signs of accommodation.

India's decision not to participate in the Nuclear Non-Proliferation Treaty (NPT), the focal point of global cooperation on non-proliferation, has underpinned its position in other non-proliferation regimes, including the Comprehensive Test Ban Treaty (CTBT) and the Fissile Material Control Treaty (FMCT). The same is true of India's approach to the five multilateral export control regimes that exist to control sensitive or strategic goods and technology in different categories: the Nuclear Suppliers Group (NSG) and the Zangger Committee are designed to control nuclear goods; the Missile Technology Control Regime (MTCR) controls technology and goods related to ballistic and cruise missiles and unmanned aerial vehicles; the Australia Group controls chemical and biological agents; and the Wassenaar Arrangement controls conventional arms and dual-use goods not covered under the other export control regimes. As most of the important non-proliferation initiatives were linked to the NPT, India's position toward most of these regimes sustained its ad hoc characters.

India has employed a strategy of patience, slow accumulation of economic strength, persistence with its nuclear programme while preaching disarmament, and conforming to domestic aspirations of great powers in dealing with global issues. It has accused Western powers of double standards wherever applicable, while also trying to woo these powers in sourcing technologies, though without much success. India also sought closer ties to the Soviet Union and received much needed military technology and industrial support, striving hard to build a formidable military industrial base and to achieve a degree of self-reliance in defence. Although India has built up a formidable arsenal over time primarily by importing weapons systems, its indigenous military industrial base remains weak. All these attributes have gradually

strengthened India's position of adamant defiance on issues such as participation in the NPT and CTBT.

By doing so, India has put itself in a difficult position vis-à-vis non-proliferation and export control regimes, and will face significant challenges in altering its position. For example, the Indian government would find it very difficult to justify to a domestic audience any decision to join the NPT, although this would lead to automatic admission into many regimes including the Zangger Committee and the Nuclear Suppliers' Group. This is primarily because India's stated position regarding universal disarmament is linked to its current position on nuclear weapons and continued opposition to the NPT.

India's position is well known and the country has tried hard to achieve external recognition of its domestic constraints, making efforts to present its case and interacting with various consultative committees of these groups at an informal level. The Indian government has made it clear to the international community that it will not abandon its nuclear weapons until global disarmament becomes a reality, which effectively means that the Indian nuclear programme will continue.

In August 2012, Indian foreign Minister S. M. Krishna told a major conference on disarmament in New Delhi that "[n]uclear weapons today are integral part of our national security and will remain so, pending non-discriminatory and global nuclear disarmament". At the same event, the Indian National Security Advisor Shivshankar Menon went further, saying that "India's hard-headed leadership had fought explicit or implicit threat by global powers to change its behaviour and toe their line". He added that other powers had used the explicit or implicit threat of nuclear weapons in an attempt to change India's behaviour on at least three occasions before 1998, and made it clear that India would continue to have nuclear weapons until universal nuclear disarmament is achieved (The Economic Times 2012).

If this is the position that India has maintained thus far, it is clear that it is likely to fight hard against all proposals that it sees as discriminatory or going against its core national security interests. It is highly likely that India will take an active and assertive role in global efforts on these issues, and will wait to see whether there is any change of heart from the other side of the table. This presents global powers with difficulty in finding ways to deal with India on non-proliferation and export control issues.

However, there have also been some signs of growing flexibility in the Indian position. Since India's nuclear tests in 1998, and specifically since 2002 when India received favourable responses from its willingness to grow closer to the United States, India's position towards multilateral regimes has appeared less rigid. Although India still opposes some basic principles of global non-proliferation regimes, its nuanced position shows some signs of accommodation. Similarly, while India is not a member of any of the five export control regimes listed above, it has adopted most of the prevalent best practices for export controls in order to become closer to these regimes. India's position on these regimes is likely to be deliberated further over the coming years, and its adherence to global export control regimes has been hailed as a positive development for India as well as for members of these regimes, though serious differences remain.

In short, the Indian approach blends pragmatism and ad-hoc stances in support of its core national security interests wherever possible, even if such attitudes stand at odds with dominant global positions. It is driven strongly by domestic consensus and is likely to remain so in the future, while also showing some signs of flexibility. The Indian government adheres to global norms and rules, but at the same time is adamant not to be formally a part of any regime that it considers discriminatory. This is likely to remain the core of India's approach for the foreseeable future.

3. External Perspectives on India's Approach

Integrating India into multilateral export control regimes stands at an interesting juncture in history, with both parties – India as well as external powers – willing to speak to each other, yet adamant on sticking to their conventional positions with respect to many contentious issues. There are serious differences between India and members of multilateral non-proliferation and export control regimes on many issues. Most of these differences are not new. There is much at stake, with some arguing that the absence of a country such as India from multilateral regimes is one of the reasons for their ineffectiveness (Medcalf and Gill 2009:11; see also Rajiv 2011:443).

Over recent years, especially since the Indo-US nuclear deal, the intensity of interaction between India and the non-proliferation and export control regimes has increased. This suggests that both India and members of these multilateral regimes are coming to terms with each other, especially with respect to difficult areas of cooperation. The US role in reaching out to India is particularly noteworthy. The November 2010 visit of Barack Obama to India witnessed a number of announcements relating to India-specific export controls. Apart from the realignment of India in the US export control system and the removal of some Indian organisations from the US Entity List¹, the Obama visit also resulted in US support for India's membership in four multilateral export control regimes (Rajiv 2011:444).

In late June 2012, the US Defence Secretary Leon Panetta identified India as one of the very few special countries that would benefit from the Pentagon's ambitious plans to reform rules and regulations governing US military exports. Specifically, he stated that

Defence trade is a promising avenue for deepening security cooperation with our most capable partner nations. Our on-going work in reforming our export control system is a critical part of fostering that cooperation and India is one such country that would benefit from changes to our system. While in Delhi recently, I announced that my Deputy, Ash Carter, will work with Indian counterparts to streamline our respective bureaucratic processes to better enable defence trade (The Indian Express 2012).

¹ The US Bureau of Industry and Security, under the Department of Commerce, issues an "Entity List", in conformity with export control rules, which bars individuals, organizations or entities from trade in sensitive technology trade (US Embassy New Delhi 2011).

Along with the US, other powers have also been active in engaging India. Indeed, it is interesting to note that the leaders of the UK, France, Russia, the US, and Germany visited India from July to December 2012, the period coinciding with the last phase of technical evaluation of the USD 1.6 billion tender for 126 Medium Multi-Role Combat Aircraft fighters. This suggests that most of these countries were willing to improve military industrial collaborations with India and willing thus to relax or re-adjust their national export control laws and regulations.

When Russian president Dmitry Medvedev visited India in December 2010, the joint statement released on that occasion stated that India and the Russian Federation were interested in strengthening multilateral export control regimes as an important component of the global non-proliferation regime. The Russian side expressed readiness to assist and promote a discussion and a positive decision in the Nuclear Suppliers' Group on India's full membership, and welcomed India's intention to seek full membership. Russia also took into positive consideration India's interest in full membership in MTCR and the Wassenaar Arrangement (Nayan 2011:443).

With respect to the EU, India has preferred to deepen its bilateral relationships with member states such as France and the UK to seek their support within the EU system. The Indian government calculates that if key member states understand its constraints and try to act flexibly, the EU may eventually support India. This would be a win-win outcome for both. It is noteworthy in this context that then French President Nicolas Sarkozy endorsed the Indian candidature for the four multilateral export control regimes during his visit to India in 2010.

However, the politics of a global regime may prevent a country from joining even if that country fulfils the formal membership criteria. With respect to India's participation in non-proliferation and export control regimes, a noted Indian expert has argued that

In all probability, membership of the Australia Group will come first, followed by that of the MTCR. Membership to the NSG may witness an initial resistance. However, India's rising profile may ultimately determine its entry into the NSG and later or simultaneously into the Wassenaar Arrangement (Nayan 2011:443-44).

This assessment is based on the international perception of India's rise, its long track record of impeccable non-proliferation efforts, serious participation in global deliberations on disarmament, and its adamant adherence to non-discriminatory rules of engagement.

It remains to be seen whether global regimes will change their attitude and try to accommodate India. However, both sides should look at issues in a pragmatic manner, and the degree of further flexibilities in future negotiations will determine the relative success or failure of such regimes.

4. Opportunities to Engage India on Non-Proliferation and Export Controls

It appears that the stalemate on India's inclusion into the non-proliferation and export control regimes is likely to continue for some time. While India sees a chance of becoming associated with global export control regimes, its membership in the Nuclear Suppliers' Group, the Zangger Committee, and the Missile Technology Control Regime looks bleak at present. India's efforts to join the Australia Group and the Wassenaar Arrangement may be more successful, but given the stance that India has taken on these regimes, and the indications of a recent hardening of positions, it is unlikely that India will be admitted into these regimes easily.

Under these circumstances, India recognises positive gestures from the US, which has singlehandedly tried to co-opt India into the regimes. However, given the complexities associated with negotiations, the US may reach a limit to its generosity, which could constrain India's aspirations. In such a scenario, India may look to European countries for support. Indeed, it is already working to woo major European countries, offering the potential for future EU-India cooperation. However, each side needs to recognize the others' constraints in dealing with such issues.

For its part, India has sent conflicting signals in recent times. The desire of some global regimes to enhance their effectiveness by bringing India on board has strengthened India's hand, providing it with opportunities to extract further concessions. India's aspirations have grown, especially after the US strived hard to relax certain regulations and helped India increase its informal interactions with global regimes. Under these circumstances, India may be tempted to demand further concessions, but it must realize that such regimes are rule-bound and based on agreed norms and conditions. For these reasons, it would not be easy for these regimes to relax their rules in order to accommodate India. Thus, India should give up some of its demands in order to enter a new phase of negotiations.

India must recognize that it needs to refine its position on export controls, at least on conventional arms and dual-use technologies, as a first step towards the possibility of its eventual integration into the global regimes. India needs to take two major steps that will bring mutual benefits: first, it must harmonize its domestic rules and regulations related to international export control rules, including agreements such as Wassenaar; and second, it must take a persuasive line in negotiations with exporting countries in order to emphasize that India is a preserver rather than a violator of international non-proliferation norms. The first of these in particular will be a herculean task for India. India's reform process especially in the defence industrial sector is progressing at a very slow pace. Hence, there is a need to speed up the reform process in the military industrial sector.

For its part, the EU needs to see Indian flexibility as an opening for further negotiations towards a mutually agreeable solution. The EU can play a constructive role. However, the Indian government can see fissures between major and smaller members of the EU on many international issues, which at times it seeks to exploit to its advantage. For example, India prefers to deal bilaterally with countries

such as France, Germany, the UK and Italy for defence goods and high technology trade, while it waits for the EU Common Security and Defence Policy to develop overarching binding rules on export controls. This strategy is likely to continue for some time until the EU develops such a policy. India expects that lucrative business opportunities in its defence sector will propel renewed interests among arms and high-tech exporting countries within Europe, who in turn would emphasise national government rules over a larger EU policy.

If and when the EU develops an overarching policy on export controls, India will have to fulfil those requirements in order to benefit from defence trade with the EU. However, such a scenario seems like a distant prospect at present. It would be in the best interests of both India and the EU to come closer to each other, to understand each other's strengths and weaknesses, and to strive to overcome differences on contentious issues.

The heightened profile of nuclear safety in the aftermath of the Fukushima incident presents a potential opening for European engagement with India over the coming years. Indian civil society and anti-nuclear lobbies have become increasingly vocal in pushing for an end to the commissioning of new nuclear reactors, and for adequate safety measures for existing plants to be put in place. Such voices also demand that India should conform to global standards on nuclear and other arms control and disarmament measures. The Indian government has tried to avoid such demands for quite some time, and has even gone as far as blaming foreign countries for raising such issues. The Prime Minister, soon after the anti-nuclear protests in Tamil Nadu on the Kodamkulam incident, asserted that such protests were funded by foreign interests.

Pressure over nuclear safety has also come from India's Comptroller and Auditor General (CAG), a statutory accounting watch dog sanctioned by the Indian Constitution, which in August 2012 severely criticized the Atomic Energy Regulatory Board for not conforming to safety standards and operating without a safety policy. Increasingly, such demands put considerable pressure on the Indian government, which may lead to more transparency on nuclear issues. This push for greater focus on nuclear safety provides an opportunity for increased EU engagement. The EU needs to analyse the strategic underpinnings of these developments, which could potentially open up a lot of issues for further negotiations, and could offer opportunities for future cooperation on civil nuclear safety issues.

While India makes efforts to harmonise its export control arrangements with standard global practices, it must convince others to adopt some flexibility in defence-related goods and services transactions. EU defence industries need to examine this process and develop plans of entry into a commercially extremely attractive Indian defence market. The lucrative nature of the Indian arms market and the long-term benefits for foreign stakeholders are two carrots offered by India to bring it closer to major world powers. The US has already shown evidence of its willingness to partner India in high-technology trade. It is high time that the EU also exploits this situation to its advantage.

5. Conclusion

The global politics of non-proliferation and export controls have been a source of significant tension and conflict between India and global powers over many decades. Against the backdrop of India's rise in global affairs, this policy paper has analyzed the likely future course of India's approach to these issues, how India's role is perceived by external powers, and what opportunities exist for building engagement around these issues.

India's long-standing position of adamant defiance on participation in global non-proliferation and export control regimes looks set to continue, at least in the short term. India has put itself in a difficult position vis-à-vis these regimes, and will face significant challenges in altering its position, due in no small part to domestic constraints. However, there have been some signs of growing flexibility in the Indian position, and India's position on these regimes is likely to be deliberated further over the coming years.

External powers have taken greater interest in interacting with India on these issues in recent years. Particularly the US but also European countries as well as Russia have sought deepened military collaboration with India, driven partly by commercial opportunities in India's defence sector. This suggests that in order to improve military industrial collaborations with India, external powers may be willing to relax or readjust their national export control laws and regulations. When dealing with European powers, India has preferred to deepen its bilateral relationships with individual EU member states such as France and the UK to seek their support within the EU system.

Integrating India into multilateral export control regimes stands at an interesting juncture in history, with both parties – India as well as external powers – willing to speak to each other, yet adamant on sticking to their conventional positions with respect to many contentious issues. While there are serious differences between India and external powers, there are also opportunities for constructive future engagement, but this will require that each side shows flexibility and recognises the constraints facing the other side. The EU and India should take the following steps in order to deepen collaboration over the coming years:

- India must realize that non-proliferation and export control regimes are rule-bound and based on agreed norms and conditions, and should give up some of its demands in order to enter a new phase of negotiations.
- The EU should see Indian flexibility as an opening for further negotiations towards a mutually agreeable solution. However, the EU needs to manage divisions between member states, especially given India's preference for dealing bilaterally with member states for defence goods and high technology trade.
- In the short term, the heightened profile of nuclear safety in India following the Fukushima incident presents an opening for European engagement with India. The EU needs to analyse the strategic underpinnings of these developments, which could potentially open up a lot of issues for further negotiations.

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